

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID SHEARD,

Petitioner,

-against-

WILLIAM A. LEE,

Respondent.
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1:18-cv-2125 (ALC)(RWL)

ORDER ADOPTING REPORT
AND RECOMMENDATION

ANDREW L. CARTER, JR., United States District Judge:

Petitioner commenced this action for habeas corpus on March 8, 2018. ECF No. 1. Respondent answered on May 22, 2018. ECF No. 9. This matter was referred to Magistrate Judge Robert W. Lehrburger on June 25, 2018. ECF No. 10. On August 23, 2018, Petitioner informed Judge Lehrburger that he was filing a motion for a writ of *error coram nobis*. ECF No. 11. The New York State Supreme Court, Appellate Division, First Department consolidated two *coram nobis* motions filed by Petitioner and summarily denied them. ECF No. 13 at 2. Both Petitioner and Respondent then requested that the Court not stay this action even though Petitioner could still apply for leave to appeal the denial of the *coram nobis* motions. ECF Nos. 13, 14. Accordingly, Judge Lehrburger issued a Report and Recommendation (“R&R”) on October 7, 2019 recommending that the Petition for writ of habeas corpus be denied and the case be dismissed.

Despite notification of both the right to object to the R&R and the consequences of failing to object,¹ no objections were filed. Because no timely objections were made, the Court “need

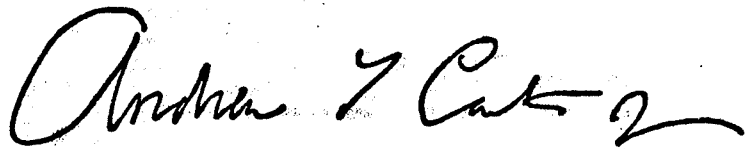
¹ The last paragraph of the R&R indicates: “Failure to file timely objections will result in a waiver of objections and will preclude appellate review.” R&R at 23 (emphasis in original).

only satisfy itself that there is no clear error on the face of the record” to adopt the R&R. *Figueroa v. Riverbay Corp.*, No. 06-CV-5364, 2006 WL 3804581, at *1 (S.D.N.Y. Dec. 22, 2006) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”). The Court has reviewed Magistrate Judge Lehrburger’s thorough and detailed discussion of the law and the record in the R&R and concludes that it is free of clear error.

In light of the foregoing, the Court **ADOPTS** Magistrate Judge Lehrburger’s R&R. Petitioner’s writ of habeas corpus is **DENIED**, the case is **DISMISSED**, and the Court respectfully directs the Clerk of Court to close this case.

SO ORDERED.

Dated: New York, New York
November 6, 2019

A handwritten signature in black ink, reading "Andrew L. Carter, Jr.", with a stylized flourish at the end.

ANDREW L. CARTER, JR.
United States District Judge